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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,134	10/14/2003	James F. Zucherman	KLYCD-05009US1	4485

7590 08/01/2006

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EXAMINER

HOFFMAN, MARY C

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/685,134	Applicant(s) ZUCHERMAN ET AL.	
	Examiner Mary Hoffman	Art Unit 3733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

maryhoffman 7/25/06

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. First of all, it is noted that the previous examiner had included an incomplete sentence in the final rejection. However, it is the current examiner's opinion that the meaning of this sentence is clear when taken in the context of the rest of the paragraph (see Office Action mailed 4/5/2006, page 3, point 4, line 1). The sentence should have read, "Applicant argues that Bertagnoli et al '852 does not disclose multiple chisels." The previous examiner further noted that the features upon which applicant relies (i.e., multiple chisels) are not recited in the rejected claims) and although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In pz' Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The current examiner agrees with this statement, because there appears to be no mention of the term "multiple chisels" anywhere in the claims, despite applicant's argument that this limitation is mentioned in claim 1, 47, and 49. Furthermore, the examiner disagrees with applicant's contention that the blades are not parallel with each other as required by claims 47, 49, and 50, since the blades appear to be parallel (see FIGS. 24-26) when viewed from a top-view. Moreover, applicant cites that the "angle 207 is 17.5 degrees", and the examiner notes that this line is directly followed by "other cam surface angles are contemplated", which is an open-ended statement and allows for angles other than 17.5, such as the angle of zero. The other quote cited by applicant refers to "the expanded configuration" and the distance 110 that shows that members 106 and 108 cannot be parallel; however, it is noted that there is also an unexpanded configuration in which there will be no distance 110. Again, it is noted that the feature upon which applicant relies (i.e., blades being parallel when in the tool is in an expanded configuration) is not recited in the rejected claims, and is therefore irrelevant. In any case, one cannot make the statement that the cutting surface is not parallel to the tool, because the cutting surface is clearly parallel when view from the top-view down, as in FIG. 25. Also, in FIG. 25-26, the prongs, or tines, clearly have inner and outer sides and first and second cutting blades. The rejections made in the previous office action are therefore deemed proper.